

BULLETIN No. 2-2010

SUBJECT: Zoning Text Amendments

SERVICE RELATIONSHIP: Commission Zoning Review

DATE: February 22, 2010

Commission Staff Review of Sangamon County Zoning Ordinance Text Amendments

Amendments to the text of the Sangamon County zoning ordinance may be submitted for consideration by the County's Zoning Board of Appeals, resulting in certain required actions by the Springfield-Sangamon County Regional Planning Commission. This being the case, the Planning Commission thought it advisable to address the factors that Commission staff might consider in reviewing proposed amendments so as to provide guidance in preparing its report to the Zoning Board as specified in code.

Requirements of RPC by Ordinance

Illinois state statute requires that no amendment to a zoning ordinance be permitted absent "a hearing before some commission or committee designated by the corporate authorities" [65 ILCS 5/11-13-4].¹ The Sangamon County zoning ordinance provides that the County's Zoning Board of Appeals (ZBA) serve in this capacity [Sangamon County Zoning Ordinance Ch. 17.68 – Amendments].

In addition, Sangamon County's code establishes the process for amending both the zoning map and ordinance. This process includes a provision [Sec. 17.68.050] requiring a review and report by the Regional Planning Commission (RPC) staff once an amendment is sent to the ZBA for consideration. This section reads:

Prior to a public hearing to be held before the Zoning Board of Appeals on each and every proposed amendment to the regulations and the districts created by this ordinance, the staff of the Regional Planning Commission shall study the proposed amendment and transmit to the Zoning Board of Appeals a written

¹ Cope, R.S. (2005). Zoning Handbook for Municipal Officials. Springfield, IL: Illinois Municipal League. P. 65.

report setting forth pertinent planning facts and summary statements of the anticipated effect the proposed amendment may have on the particular locality and the region. The report will be of an advisory nature and may suggest any one of the following conclusions: (a) that the proposed amendment is advantageous to the immediate vicinity, the community or the region; or (b) that the proposed amendment with modification would be advantageous to the immediate vicinity, the community or the region; or (c) that the proposed amendment would be disadvantageous to the immediate vicinity, community or region.

Several requirements are suggested in this language:

- The RPC is required to provide the ZBA with a written report on “each and every proposed amendment”. The production of the report is not discretionary and must be provided prior to the required public hearing.
- Following its required study of the amendment, the RPC is to address “pertinent planning facts” and provide a summary of the “anticipated effect” of the proposed amendment on the locality and region. This suggests that the RPC is to address the larger implications of the proposal, not just its implications for a parcel or parcels in an immediate area. It also suggests that the RPC’s work should be guided by the facts in evidence.
- While the report is only advisory, it may come to a conclusion that leads to a recommendation. It is not required that the RPC provide a staff recommendation related to an amendment outside of what is included in its report, but if it does, this opinion should indicate whether the RPC finds the amendment advantageous, advantageous with modifications, or disadvantageous.
- Consistent with pertinent planning facts and anticipated effect arising from these evidenced facts, any conclusion should take into account the advantages and disadvantages of the proposal on the “immediate vicinity, the community or region.” Again, broader implications may be identified.

While the RPC believes that the provisions allowing staff to reach a conclusion may be more relevant to zoning map changes than text amendments, the ordinance does not limit it to map amendments. This is taken as indicating that while a staff recommendation is not required for a text amendment, it *may* be provided at the discretion of the RPC. However, the report addressing planning facts and summary statements of anticipated effect *is* required. And this assessment is not intended to simply address a specific property or location, but is to consider both local and regional effects.

Approach to Text Amendment Review

The section of the County’s zoning ordinance noted above specifies the actions that the RPC staff is to take when an amendment to the text of the ordinance is referred to the ZBA. As noted above, the ordinance requires that the RPC provide a written report that addresses two factors. The first arises from the ordinance’s requirement that the Commission study the proposed amendment in light of “pertinent planning facts”, and the second pertains to assessing “the anticipated effect the proposed amendment may have on the particular locality and the region”. Both factors may be inter-related.

In developing its report, the Commission believes that four aspects of a proposed text amendment are relevant in this review: *clarity*, *enforceability*, *consistency*, and *evidence* of a reasoned public purpose.

Since the complexity or incompleteness of the text can create ambiguity, *clarity* is meant to address whether or not the language of the amendment is well crafted and therefore unambiguous. This being the case, the RPC should review the language submitted to ensure that it is well-drafted and clear in its intent. For example, if an amendment were to establish certain specific requirements or allowances for a “mini-ranch” without defining what such a use is and how it differs from other uses, one might determine that the amendment is not clear or well-drafted.

For regulations to be effective they must be able to be *enforced*. When reviewing proposed text amendments, the RPC should consider whether or not regulations or limitations included in the amendment can be enforced. Again we will use as an example an amendment to regulate “mini-ranches”. In the absence of any definition of this use, it would not be clear that the code could be enforced. Equally, if a mini-ranch were defined, but the ordinance were to contain language noting that such a use could not create “unnecessary odors”, absent a determination of what constituted an “unnecessary odor”, the ordinance would not be clear or enforceable.

While zoning codes may be complex, they should also be *consistent*. As a general rule, and since parts of the code may be inter-related, similar uses should be treated similarly in zoning districts unless there is a clear reason for them to be treated differently. For example, if a “tailor shop” is allowed in certain zoning districts, one might question the consistency (and clarity) of an amendment that would not allow a “seamstress shop” in the same districts absent some evidence that establishes a difference related to use between a tailoring and a seamstress shop. Equally, if barber shops and hair salons are treated differently in terms of bulk requirements or setbacks, one might question consistency in the regulation of use. However, if a hair salon were to include a day spa, staff might find a difference existing between a hair salon with a spa and one without, or with a barber shop. Such differences would arise from the evidence presented that would lead the RPC to a different finding of fact.

Considering the evidenced reasonableness of a regulation or limitation may be the most difficult. As Cope notes², zoning laws are based on the police power of the state to enact laws for the safety, health, morals and general welfare of the public, and that zoning regulations must have a reasonable relationship to one or more of them. This appears to suggest two questions that RPC staff should consider in developing its report. The first relates to the relationship between the proposed regulation and its stated public purpose: is there evidence that the regulation is reasonably related to safety, health, morals and general public welfare? The second relates to the magnitude of the conditions of the regulation: is there evidence that the scope of the regulation is reasonable to achieve the stated purpose?

The first analytic question is intended to address whether or not the regulation is associated with one of the general purposes to be addressed through zoning, and the second is intended to consider whether or not the requirement is reasonable for the purpose intended. Both questions are relevant in considering a text amendment. The RPC may find, for example, that the regulation is reasonably related to a public purpose, but that the scope of the regulation itself is not sufficient to achieve the desired end (it would not be effective), or goes beyond what is actually required to achieve that end (it becomes arbitrary or exclusionary).

² Cope (2005), pp. 2, 47.

Since the Sangamon County ordinance specifies that the RPC staff's advisory opinion be based upon "pertinent planning facts", the staff should review proposed text amendments to determine if evidence is presented that: (a) the regulation or limitation reasonably addresses safety, health, morals and general welfare of the public and provides some nexus to one or more of them; and (b) is reasonably necessary for the purpose proposed rather than being insufficient, arbitrary or exclusionary. For example, if the zoning ordinance were to allow a "mini-ranch" in certain zoning districts, but require that they may only be established on lots of 10 acres or more, it would be appropriate to determine how this restriction relates to safety, health, morals and general public welfare, and how the 10 acre requirement was established as reasonably necessary to achieve that end.

The importance of evidencing the reasonableness of the regulation is not unimportant in considering a text amendment. Various authors have suggested that actions by zoning boards entail a quasi-judicial process involving the collection of evidence that leads to findings of fact. This being the case, assessing the evidentiary basis upon which the new regulation is proposed, and considering whether or not the limitations provided by the regulation are reasonably evidenced as meeting the need for it – therefore not arbitrary or exclusionary – seem relevant to reaching any of the three conclusions that the RPC staff may submit to the ZBA under Sec. 17.68.050 of the ordinance.

It would also seem particularly relevant in determining whether or not the regulation would lead to exclusionary zoning. Although courts still determine whether prohibiting a particular use "was arbitrary or discriminatory in light of the already existing uses of nearby property"³, as a general rule it has been held that a municipality may not wholly restrict a lawful business from its boundaries. Determining whether or not there is evidence of some objective and reasonable basis for a regulation appears to be prudent in situations where over-regulation might lead to an exclusionary practice.

SSCRPC *Planning Bulletins* are provided for educational and informational purposes only. They are not intended to provide a legal opinion and do not. Those seeking legal guidance concerning matters coming before the Springfield-Sangamon County Regional Planning Commission are encouraged to obtain appropriate legal counsel. For more information concerning the subject covered by this or other *Planning Bulletins*, please contact the Planning Commission at 217-535-3110, or e-mail us at sscrpc@co.sangamon.il.us.

Springfield-Sangamon County Regional Planning Commission
200 South 9th Street, Room 212, Springfield, Illinois 62701-1629
Phone: 217-535-3110 Fax: 217-535-3111 Email: sscrpc@co.sangamon.il.us

³ Cope (2005). P. 9.